

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

TUMWATER ESTATES COMMUNITY, LLC, a Washington limited liability company; TUMWATER ESTATES INVESTORS, a California limited partnership; VELKOMMEN MOBILE PARK, LLC, a Washington limited liability company; and MANUFACTURED HOUSING COMMUNITIES OF WASHINGTON, a Washington non-profit corporation,

No. 3:09-cv-05312-BHS

SUPPLEMENTAL
DECLARATION OF
WILLIAM SCHMICKER IN
SUPPORT OF PARTIAL
SUMMARY JUDGMENT

Plaintiffs.

v.

CITY OF TUMWATER, a municipal corporation,

Defendant.

WILLIAM SCHMICKER declares and states as follows:

1. I am over the age of eighteen, competent to testify, and familiar with the facts herein.

2. I am a partner in plaintiff Tumwater Estates Investors, which owns Tumwater Estates, a manufactured housing community located in Tumwater, Washington. I have purchased, sold, and managed manufactured home communities since 1977.

3. We purchased Tumwater Estates well before Tumwater's manufactured home park ordinances took effect, and we anticipated using our property as a mobile home park so long as that use was economically viable. We expected to be able to turn to other economically

1 productive uses at our discretion or to sell it if it became economically unviable. Our plan was to
 2 hold onto the property until the highest and best use of the property changed and then we
 3 expected to realize our economic expectation by either selling the property or redeveloping it for
 4 commercial purposes

5 4. I purchased my interest in Tumwater Estates for its current rental revenue and for
 6 a meaningful choice of other land uses that generate income or increase its resale value. I did not
 7 expect that either the County or the City would require that I continue to use the property as a
 8 manufactured home community in perpetuity, or that they would effectively accomplish the
 9 same result by allowing me to choose between using my property for one economically viable
 10 use, or other mostly public uses that do not generate income.

12 5. I have always expected that I would share in my portion of public obligations, and
 13 I am proud to have offered affordable housing at Tumwater Estates and other manufactured
 14 home communities since 1977. But, I never expected that I would be required by Tumwater to
 15 shoulder more than my share of any public obligation to provide affordable housing, or that
 16 Tumwater would later exercise its zoning power to require that I either continue to make my
 17 property available as affordable housing, or “choose” another public use that is not viable.

18 6. When I invested in Tumwater Estates, I did so to diversify my investments in
 19 California manufactured housing communities that are subject to significant governmental
 20 regulation, including rent control. At the time, neither Tumwater nor any other local government
 21 in Washington required that I choose between one use that generates revenue, and other uses
 22 which generate little or no revenue. I chose to invest in Tumwater Estates specifically because
 23 Washington and Tumwater did not have rent control or legal regimes that restricted the property
 24 rights of park owners. I had no reason to believe that would change until Tumwater passed its
 25
 26 Supp. Declaration of William Schmicker - 2

Talmadge/Fitzpatrick
 18010 Southcenter Parkway
 Tukwila, Washington 98188-4630
 (206) 574-6661 (206) 575-1397 Fax

1 MHP Ordinance.

2 Before Tumwater passed its MHP Ordinance, my property rights did not allow
3 Tumwater to require that I choose between realizing an income from the property, or realizing no
4 income in any other permitted use. After Tumwater passed its ordinance, I now have a choice
5 that is no choice. The difference is what I expected when I invested in Tumwater Estates, and do
6 not now have. The difference is also how Tumwater Estates has been damaged by the MHP
7 ordinance. I commenced this action to recover that damage and simply get what I had before
8 Tumwater enacted its MHP ordinance.

9 I declare under penalty of perjury under the laws of the State of Washington that the
10 foregoing is true and correct.
11

12 Executed at Walnut Creek, California this 3 day of March, 2011.

13
14
15 William Schmicker
16
17
18
19
20
21
22
23
24
25
26

Supp. Declaration of William Schmicker - 3

Talmadge/Fitzpatrick
18010 Southcenter Parkway
Tukwila, Washington 98188-4630
(206) 574-6661 (206) 575-1397 Fax